

PT 98-23
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

LOVE TEMPLE FULL GOSPEL CHURCH)			
Applicant)			
)	Docket #	95-49-147	
v.)			
)	Parcel Index #	08-05-211-047	
THE DEPARTMENT OF REVENUE)			
OF THE STATE OF ILLINOIS)			

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on April 9, 1997, to determine whether or not Lake County Parcel Index No. 08-05-211-047 and the residence thereon should be exempt from real estate taxation for the 1995 assessment year.

Rev. Leon C. Cosey, Jr. pastor of the Love Temple Full Gospel Church (hereinafter referred to as the "Applicant"), was present at the hearing and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a religious organization; secondly, did the applicant own this parcel during the 1995 assessment year; and lastly, did the applicant use this parcel and the residence thereon as a parsonage for its pastor, or was this parcel leased or otherwise used for profit during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned this parcel during the entire 1995 assessment year. Finally, it is determined that this parcel was leased by the applicant to Rev.

Cosey. It is therefore recommended that Lake County Parcel Index No. 08-05-211-047 remain on the tax rolls for the 1995 assessment year and be assessed to the applicant.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. On June 22, 1995, the Lake County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review, which had been filed by the applicant with the Board on January 24, 1995. (Dept. Ex. No. 1)

3. On April 11, 1996, the Department notified the applicant that it was denying the exemption of this parcel for the 1995 assessment year. (Dept. Ex. No. 2)

4. The pastor of the applicant then requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, conducted on April 9, 1997, was held pursuant to that request.

6. The applicant acquired the parcel here in issue and the residence thereon by a warranty deed dated November 17, 1994. (Dept. Ex. No. 1A)

7. During 1995, the applicant shared a church building at 1203 Glen Flora Avenue, Waukegan, Illinois, with another congregation. The applicant held services at that building on Saturday evenings at 6:45 P.M. and Thursday evenings at 7:00 P.M. The Saturday evening services lasted about three hours and the Thursday evening services lasted about two hours. (Tr. p. 10)

8. During 1995, there were approximately 100 adults and children attending applicant's worship services. (Tr. p. 10)

9. Rev. Cosey was ordained a minister by the applicant on April 6, 1988. (Appl. Ex. No. 1)

10. It is a condition of his employment that Rev. Cosey live in the house on this parcel, which is owned by the applicant. (Tr. p. 11, Dept. Ex. No. 1B)

11. During all of the 1995 assessment year, Rev. Cosey, his wife, and three children lived in the house on this parcel. (Tr. p. 11)

12. During 1995, church business meetings and youth meetings were held at the residence on this parcel. (Tr. p. 11)

13. This parcel is located about 4 miles from the church building where the applicant holds worship services. (Tr. p. 11)

14. When the applicant was negotiating for a loan to purchase this parcel, because the applicant was a small congregation, the lender required that this property be treated by the applicant as income property. As a result of this requirement, the applicant, as lessor, entered into a lease with Rev. Cosey, as lessee, whereby Rev. Cosey leased this parcel and the residence thereon from the applicant for \$575.00 per month. This lease provided that on renewal of the lease for each successive year, the rent would increase \$25.00 per month. The lease also provided that the applicant would deduct the rent from Rev. Cosey's salary. The applicant then used that amount to make the monthly mortgage payment. (Dept. Ex. No. 1I, Tr. p.12)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-40 exempts certain property from taxation as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or

otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility. (Emphasis supplied)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In view of 35 ILCS 200/15-40, this parcel and the residence thereon meet all of the criteria necessary to qualify for exemption as a parsonage, except this parcel is leased by the applicant to Rev. Cosey for \$575.00 per month. 35 ILCS 200/15-40 clearly states that for a parsonage to qualify for exemption, it must not be leased or otherwise used for profit.

It should also be noted the Illinois Courts have consistently held that the use of property to produce income is not an exempt use. People ex rel. Baldwin v. Jessamine Withers Home,

312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (1988), leave to appeal denied.

Based on the foregoing, I recommend that Lake County Parcel Index No. 08-05-211-047 remain on the tax rolls for the 1995 assessment year, and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
March 19, 1998